

# RULES AND REGULATIONS

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## Chapter 6. Rules of Professional Conduct

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### Section 6.1. Preamble

- 6.1.1. The Mississippi State Board of Public Accountancy promulgates these *Rules of Professional Conduct* within the *Rules and Regulations* under the authority of Title 73, Chapter 33 of the Mississippi Code of 1972, as amended which directs the Board to adopt and enforce such rules and regulations “. . . as the Board considers necessary to maintain the highest standard of proficiency in the profession of certified public accounting and for the protection of the public interest.” The services usually and customarily performed by CPAs involve a high degree of skill, education, trust and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public’s reliance, in turn, imposes obligations on persons utilizing professional designation, both to their clients and to the public in general. These obligations include maintaining independence of thought and action, continuously improving professional skills, observing, where applicable, generally accepted accounting principles, generally accepted auditing standards, and other professional standards, promoting sound and informative financial reporting, holding the affairs of clients in confidence, upholding the standards of personal and professional conduct in all matters affecting fitness to the practice of accountancy.
- 6.1.2. The *Rules of Professional Conduct* are intended to have application to all professional services performed by licensees, CPA firms, non-CPA owners, CPAs qualified for practice privileges and/or firm permit holders (registrants) including but not limited to auditing, accounting, review and compilation services, tax preparation services, tax advisory services, management advisory services, financial advisory, investment planning, and consulting services.
- 6.1.3. The *Rules of Professional Conduct* are intended to apply as well to all registrants and CPAs qualified for practice privileges, whether or not engaged in the practice of public accounting, except where the wording indicates that the applicability is more limited. However, a registrant practicing outside the United States will not be subject to discipline for

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departing from any of the rules stated herein so long as his conduct is in accord with the rules of the organized accounting profession in the country in which he is practicing. However, where a registrant's name is associated with financial statements in such a manner as to imply that he is acting as an independent certified public accountant and under circumstances that would entitle the reader to assume that United States practices were followed, he must comply with the requirement of all applicable rules.

- 6.1.4. A CPA shall be held responsible for compliance with the *Rules of Professional Conduct* by all persons associated with him in the practice of public accounting who are either under his supervision or are his partners, shareholders, or members in the practice. A firm permit holder shall be responsible for assuring compliance with these rules by any of its officers, directors, shareholders, principals, partners, proprietors, employees or agents.
- 6.1.5. A CPA or firm permit holder shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the registrant would place him in violation of the rules of professional conduct.
- 6.1.6. These rules do not identify all acts that may be considered incompatible with the obligations and responsibilities imposed by professional status or discreditable or harmful even though not specifically mentioned or described in the rules. Any registrant may be censured, suspended or revoked by the Board for any unprofessional conduct or other sufficient cause whether or not the alleged misconduct is specifically enumerated or described in the following rules, provided proper notice and hearing is given said registrant.

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### Section 6.2. Independence.

6.2.1. A CPA or firm of which he is partner, member, or shareholder shall not express an opinion or issue a review report on financial statements of a client unless he is and, if applicable, his firm are independent in fact and appearance with respect to such client. Examples of such impairment of independence include but are not limited to:

- (a) During the period of the professional engagement or at the time of expressing an opinion or issuing a review report, he or the CPA firm:
  - (1) had or was committed to acquire any direct or material indirect financial interest in the client; or
  - (2) had any joint closely held business investment with the client or any officer, director, partner, or principal stockholder thereof which was material in relation to the CPA or firm permit holder's net worth;
  - (3) had any loan to or from the client or any officer, director partner, or principal stockholder thereof. This latter proscription does not apply to the following loans from a financial institution when made under normal lending procedures, terms and requirements:
    - a. loans obtained by a CPA or the firm which are not material in relation to the net worth of such borrower;
    - b. home mortgages;
    - c. other secured loans, except loans guaranteed by a CPA's firm which are otherwise unsecured;
  - (4) was a trustee of any trust or executor or administrator of any estate that had or was committed to acquire any direct or material indirect financial interest in the client;

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- (b) During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion or issuing a review report, the CPA or the CPA firm:
  - (1) was connected with the client as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management of an employee;
  - (2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had a direct or material indirect financial interest in the client; or was a trustee for any pension or profit-sharing trust of the client;
  - (3) had a commitment from the client for a commission or contingent fee in violation of Sections 6.6. or 6.7.
- 6.2.2. In any instance in which a CPA's name and/or CPA firm's name is associated with financial statements, if he/it is not independent, such lack of independence shall be disclosed.
- 6.2.3. Independence will be presumed to be impaired if the CPA or firm permit holder performs audit services, other than for charitable organizations, for a fee that is less than the direct labor cost reasonably expected at the time the engagement was accepted to be incurred in performing such services. For this purpose direct labor costs means the total compensation of the person or persons expected to perform the service for the time they are expected to serve on the engagement plus all payroll expenses related to such compensation.
- 6.2.4. A CPA or firm permit holder's independence may be impaired by a close relative's association with a client. Close relatives are defined as spouses and dependent persons, whether or not related, and defined as dependent and non-dependent children, grandchildren, stepchildren, brothers, sisters, parents, grandparents, parents-in-law, and their respective spouses.

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- (a) CPA and firm permit holders must consider whether the strength of personal and business relationships between the CPA or firm permit holder and the close relative would lead a reasonable person who is aware of all the facts to conclude that the situation poses an unacceptable threat to the certificate or registration holder's objectivity and appearance of independence. In reaching this conclusion, the CPA or firm permit holder should consider the specific association with the client.
  - (b) A CPA or firm permit holder's independence will be presumed to be impaired with respect to a client if:
    - (1) during the period of the professional engagement or at the time of expressing an opinion, the CPA or firm permit holder participating in the engagement has knowledge of a close relative who has a material financial interest in the client;
    - (2) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:
      - a. the CPA or firm permit holder participating in the engagement has a close relative who could exercise significant influence over the operative, financial, or accounting policies of the client or is otherwise employed in a position in which the close relative's activities are normally an element of or subject to significant internal accounting controls;
      - b. a proprietor, shareholder, or individual in a managerial position in a licensee or firm permit holder's office has a close relative who could exercise significant influence over the client's operating, financial, or accounting policies, if that proprietor, shareholder or individual participates in a significant portion of the engagement.
- 6.2.5. The examples of impaired independence described in subsections above are not intended to be all-inclusive.

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#### Section 6.3. Integrity

- 6.3.1. The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality, and integrity. To this end, a CPA and firm shall at all times maintain independence of thought and action, hold the affairs of clients in strict confidence, strive continuously to improve professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.
- 6.3.2. A CPA shall not knowingly misrepresent facts, and/or subordinate his judgment to non-CPAs. In tax practice, a CPA may resolve doubt in favor of the CPA's client as long as there is reasonable support for the CPA's position.

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### Section 6.4. Objectivity

- 6.4.1. When offering or rendering accounting or related financial, tax, management or investment or advice, a CPA or firm permit holder shall be objective and shall not place its own financial interests nor the financial interests of a third party ahead of the legitimate financial interests of a client or the public in any context in which a client or the public can reasonably expect objectivity from one using the CPA title.
- 6.4.2. If a CPA or firm permit holder uses the CPA title in any way to obtain or maintain a client relationship, the Board will presume the reasonable expectation of objectivity.

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### Section 6.5. Solicitation, Advertising and Public Communication

- 6.5.1. A CPA or firm permit holder shall not seek to obtain clients by any communication or advertising (written, oral, or electronic), or other forms of solicitation: (1) in a manner that is false, fraudulent, misleading, deceptive, unfair, tends to promote unsupported claims, or (2) which is accomplished or accompanied by the use of coercion, duress, compulsion, intimidation, or vexatious or harassing conduct. A false, fraudulent, misleading, deceptive, unfair, unsupported statement or claim includes (but is not limited to) those that:
- (a) create false or unjustified expectations of favorable results;
  - (b) contain a misrepresentation of fact;
  - (c) imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
  - (d) consist of statements that are self-laudatory and that are not based on verifiable facts;
  - (e) make incomplete comparisons with other licensees;
  - (f) contain testimonials or endorsements;
  - (g) is likely to mislead or deceive because in context it makes only partial disclosure of relevant facts;
  - (h) relate to fees or a range of fees not fully disclosing all variables and other relevant facts; or
  - (i) contain any other representations that would be likely to cause a reasonable and ordinary prudent person to misunderstand or be deceived.

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- 6.5.2. A CPA shall not on behalf of himself, his partner or associate, or any other individual affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive or unfair statement or claim, or advertising which the Board considers to be self-serving rather than in the public interest.
- 6.5.3. It shall be a violation of these rules for a CPA or firm permit holder to persist in contacting a prospective client when the prospective client has made known or the CPA or firm permit holder should have known the prospective client's desire not to be contacted. Any attempt to continue a contact, which the CPA or firm permit holder knows or should know is unwanted, is not permitted.
- 6.5.4. In the case of direct communications including mail, e-mail, fax internet or other communications, the CPA or firm permit holder shall retain a copy of the actual mailing along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the CPA or firm permit holder for a period of at least 36 months from the date of the last transmission or use. This does not apply to persons when:
- (a) the communication is made to a person who is at that time a client of the CPA or firm permit holder; or
  - (b) the communication is invited by the person to whom it was made.
- 6.5.5. In the case of public advertising the CPA or firm permit holder shall retain a record of said advertising for at least 36 months.
- 6.5.6. A CPA or CPA firm offering to perform professional services via the internet shall include the following information on the internet:
- (a) CPA business or CPA firm name;
  - (b) principal place of business;
  - (c) business telephone;
  - (d) Mississippi CPA license number (identified as Mississippi); and
  - (e) Mississippi CPA firm permit number.
- The disclaimer explained in Section 3.1.9. must be included by non-qualified firms.

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### Section 6.6. Commissions

6.6.1. A CPA or firm permit holder shall neither pay any consideration or commission to obtain a client, nor accept any consideration or commission for the referral of a client to others, nor for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the CPA or the CPA firm also performs for that client any of the following:

- (a) an audit or review of a financial statement;
- (b) a compilation of a financial statement when the CPA or firm permit holder expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence;
- (c) an examination of prospective financial information; or
- (d) any other service requiring independence.

This prohibition applies during the period in which the CPA or firm permit holder is engaged to perform any of the services listed above and the period covered by any historical financial statements involved.

6.6.2. A CPA or firm permit holder who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee or firm permit holder recommends or refers a product or service to which the commission relates and in compliance with these *Rules and Regulations*.

6.6.3. A CPA or firm permit holder who accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of Section 6.6.5. of these *Rules and Regulations*.

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- 6.6.4. This rule shall not prohibit payments for the purchase of all, or a material part of, an accounting practice, non-compete agreements, or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs and estates.
- 6.6.5. Disclosures of commissions for the recommendation or referral of a product or service to client(s) or considerations or commissions to a client for a referral shall include the minimum disclosures in accordance with the following.
- (a) be in writing, be clear and conspicuous;
  - (b) state the amount of the consideration or commission or the basis on which it will be computed;
  - (c) be made at or prior to the time of the recommendation or referral of the product or service for which consideration or commission is paid or prior to the client retaining the licensee or firm permit holder to whom the client has been referred for which a referral fee is paid; and
  - (d) be signed by both the CPA or firm permit holder and the client.

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### Section 6.7. Contingent Fees

- 6.7.1. Professional services shall not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the findings or result of such services. However, fees may vary depending, for example, on the complexity of the service rendered.
- 6.7.2. Fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

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### Section 6.8. Competence

A CPA or firm permit holder shall not undertake any engagement which he or the firm cannot reasonably expect to complete with professional competence and due professional care, including compliance, where applicable with Sections 6.9., 6.10., and 6.11. of these *Rules and Regulations* relating to auditing standards, accounting principles, and other professional standards.

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### **Section 6.9. Auditing Standards**

- 6.9.1. A CPA or firm permit holder shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant unless he has complied with the applicable generally accepted auditing standards.
  
- 6.9.2. Statements on auditing standards issued by the American Institute of Certified Public Accountants and in other pronouncements having similar generally recognized or legal authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where applicable, must be justified by those who do not follow them.

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### Section 6.10. Accounting Principles

- 6.10.1. A CPA or firm permit holder shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle which has a material effect on the statements taken as a whole, unless the CPA or firm permit holder can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases the report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.
- 6.10.2. Generally accepted accounting principles are represented by the Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, and any predecessor entities, and similar pronouncements issued by other entities having similar generally recognized authority, such as the Accounting Research Bulletins and Accounting Principles Board Opinions which are not superceded by action of the FASB, including subsequent amendments.

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#### **Section 6.11. Other Professional Standards**

A CPA or firm permit holder shall conform to all professional standards applicable to the services being performed including but not limited to government accounting and auditing, public company engagements, consulting, accounting and review services, tax practice, financial projections.

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### Section 6.12. Confidential Client Information

6.12.1. A CPA or firm permit holder shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client. This rule shall not be construed:

- (a) to relieve a CPA or firm permit holder of his obligation under Sections 6.9, 6.10, and 6.11. of these *Rules and Regulations*,
- (b) to affect in any way compliance with a valid subpoena or summons enforceable by the Board or by order of a court,
- (c) to prohibit review of a practice unit's professional practices as a part of the Board's practice review or for peer review, or
- (d) to preclude a CPA or firm permit holder from responding to any inquiry made by the Board under state statutes, or a duly constituted investigative or disciplinary body of a national or state professional accounting association.

6.12.2. Members of the Board and professional practice reviewers shall not disclose any confidential client information which comes to their attention from CPAs in disciplinary proceedings or otherwise in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with an aforementioned duly constituted investigative or disciplinary body.

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### Section 6.13. Records

- 6.13.1. A CPA or firm permit holder shall furnish to a client or former client (regardless of the status of the client or former client account) upon request, any accounting or other records belonging to, or obtained for, the client which he or the firm may have had occasion to remove from the client's premises, or to receive for the client's account, but this shall not preclude him from making copies of such documents when they form the basis of work done by him (or his firm), but in no event shall the accountant have a lien on these accounting or other records.
- 6.13.2. Within a reasonable time after original issuance, a CPA or firm permit holder shall furnish to a client, or former client, upon request (subject to the provisions of this section):
- (a) a copy of a tax return,
  - (b) a copy of a report, or other document, that was previously issued to or for such client (provided that furnishing such reports to or for such client or former client would not cause the violation of Section 6.9., Auditing Standards concerning subsequent events),
  - (c) source documents provided by the client; or
  - (d) a copy of the working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client. Examples of records include but are not limited to computer generated books of original entry, general ledgers, subsidiary ledgers, adjusting, closing and reclassification entries, journal entries and depreciation schedules or their equivalent.

The information should be provided in the medium in which it is requested if it exists in that format (for example electronic or hard copy). It does not have to be converted to another format.

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- 6.13.3. In no case shall source documents be withheld from clients; however, the CPA or firm permit holder shall not be compelled to surrender work products for which he has not been compensated. A CPA or firm permit holder shall also be permitted to collect in advance of issuance a reasonable fee for time and expenses of issuing or reproducing a return and/or report referred to above.
- 6.13.4. All statements, records, schedules, working papers and memoranda made by a CPA or firm permit holder incident to or in the course of professional services to clients by such CPA or firm permit holder to a client, must be retained for a minimum period of five years and shall remain the property of such licensee or firm permit holder in the absence of an express agreement between such licensee or firm permit holder and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed without the consent of the client or his personal representative or assignee to anyone other than one or more surviving partners or new partners of such licensee or firm permit holder or to his corporation or any combined or merged partnership or successor in interest to the partnership.

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#### Section 6.14. Discreditable Conduct

- 6.14.1. A CPA shall conduct himself in a manner which will contribute to the honor and dignity of the State and the profession and shall not at any time commit an act or engage in any conduct discreditable to the accounting profession.
- 6.14.2. A discreditable act includes but is not limited to:
- (a) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA in other respects;
  - (b) stating or implying an ability to improperly influence a governmental agency or official; or
  - (c) failing to comply with any order issued by the Board.

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### Section 6.15. Discipline by Federal and State Authorities

- 6.15.1. A CPA shall conduct himself in a manner which will not cause him to be disciplined by federal or state agencies or boards for violations of laws or rules on ethics. A licensee or firm permit holder who engages in activities regulated by other federal or state authorities (including but not limited to the following agencies: IRS, Department of Revenue, SEC, State Bar, Mississippi Secretary of State, State Auditor, State Treasurer, Department of Insurance, GAO, HUD) must comply with all such authorities' ethics laws and rules.
- 6.15.2. A CPA or firm permit holder shall not perform actions in ways that would cause suspension or disbarment from practice before the Treasury Department or other federal agency or have his CPA certificate/license issued by any other state or territory revoked or suspended for reasons other than non-payment of fees, failure to register, failure to meet educational requirements, or other similar technical administrative reasons.

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#### Section 6.16. Form of Practice

A CPA may practice public accounting, whether as an owner or employee, only through an entity meeting ownership requirements as specified in Chapter 3. of these *Rules and Regulations* and properly registered with the Board with a firm permit to practice public accountancy unless otherwise exempted by statute.

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### Section 6.17. Prohibited Acts

The following acts shall constitute grounds for which disciplinary actions may be taken by the Board:

- 6.17.1. The CPA or firm permit holder has made misleading, deceptive, untrue, or fraudulent representations in the practice of public accounting.
- 6.17.2. The CPA or firm permit holder has been convicted of a felony.
- 6.17.3. The CPA or firm permit holder obtained his license to practice public accounting by use of fraud or a material misrepresentation of a material fact.
- 6.17.4. A person has knowingly attested as an expert in accountancy to the reliability or fairness of presentation of financial information or utilized any form of disclaimer of opinion which is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed prior to obtaining or without holding an active license. This shall not prevent the performance by persons other than certified public accountants of the services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon.
- 6.17.5. A person knowingly presents as his own, the license to practice public accounting of another.
- 6.17.6. A person knowingly gives false or forged evidence to the Board or a member thereof for the purpose of obtaining or renewing a license to practice public accounting.

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- 6.17.7. A person violates or knowingly conceals information relative to the Mississippi Code Section 73-33-1, et.seq., any successor statutes, or regulations promulgated thereunder.
- 6.17.8. The CPA or firm permit holder attempts to procure or renew a license to practice public accounting by bribery, or fraudulent misrepresentations.
- 6.17.9. The CPA or firm permit holder has a license or firm permit to practice public accounting revoked, suspended or otherwise acted against by the authority of another state, territory or country.
- 6.17.10. The CPA or firm permit holder is convicted or found guilty, regardless of adjudication, or pleads no contest to a crime in any jurisdiction which directly relates to the practice of public accounting or the ability to practice public accounting.
- 6.17.11. The CPA or firm permit holder makes or files a report, which he knows to be false, willfully fails to file a report or record required by state or federal law, willfully impedes or obstructs such filing, or induces another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a certified public accountant.
- 6.17.12. The CPA or firm permit holder is guilty of fraud or deceit, or of gross negligence, incompetency, or misconduct in the practice of public accounting.
- 6.17.13. The CPA or firm permit holder has had his right to practice accounting before any state or federal agency suspended or revoked.
- 6.17.14. The CPA or firm permit holder has performed a fraudulent act while holding a license to practice public accounting.

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- 6.17.15. The failure by a person disciplined to abide by the additional penalties and/or requirements shall be a violation of the rules of the Board.
- 6.17.16 Failure of a CPA or firm permit holder to notify the Board in writing of any and all changes in mailing addresses and other data amendments required to be notified as a part of these Rules and Regulations.
- 6.17.17. Failure of a CPA or firm permit holder to cooperate with the Board in connection with an inquiry it shall make. Cooperation includes fully responding in a timely manner to all inquiries of the Board or representatives of the Board mailed to the last address furnished by the CPA or firm permit holder to the Board.

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